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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC 11 1996

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
800 Data Base Access Tariffs and)	CC Docket No. 93-129
the 800 Service Management System)	
Tariff and)	
)	
Provision of 800 Services)	CC Docket No. 86-10

NYNEX OPPOSITION

The NYNEX Telephone Companies ("NYNEX")¹ hereby oppose MCI's and AT&T's Petitions For Reconsideration in the above-captioned matter.

Both MCI and AT&T ask the Commission to reconsider its Report and Order² and require the LECs to reduce their Price Cap Indices ("PCIs"), on a one-time basis, by an aggregate \$119.4 million (MCI) and \$153.4 million (AT&T),³ respectively, because the LECs' PCIs over the last 3-1/2 years included certain exogenous costs that the Commission ultimately disallowed in the Report and Order. These Petitions should be denied.

Both MCI and AT&T argue that the Commission has the authority to order refunds and must do so pursuant to Section 204(a) of the Act and the accounting order in this proceeding.⁴

¹ The NYNEX Telephone Companies are New York Telephone Company and New England Telephone and Telegraph Company.

² FCC 96-392 (October 28, 1996).

³ The \$153.4 million includes interest. NYNEX's share is calculated by AT&T to be an additional \$7.2 million, including interest.

⁴ 8 FCC Rcd 3242 (1993).

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However, neither the Act nor the terms of the accounting order explicitly require the Commission to order a refund. Section 204(a) clearly states that upon conclusion of a rate investigation, the Commission “may” order the carriers to make a refund. The Commission has ruled on numerous occasions that the statute gives the Commission the discretion to determine whether, and on what basis, refunds should be ordered.⁵ Here, the Commission has exercised that discretion by requiring only a prospective reduction in rates and not a retroactive refund as requested by petitioners.

MCI and AT&T also fail to recognize that the PCIs for price cap LECs may have been above the Actual Price Indices (“APIs”) during this 3-1/2 year period. MCI states that “inflated PCIs have resulted in LEC customers paying a total of \$119.4 million in unjustified charges during the 42-month period the accounting order was in effect.”⁶ MCI assumes that a reduction to the PCI always results in an equal reduction in rates. This is not the case. In fact, for a company pricing below the cap, the impact on rates is less than the dollar impact of the PCI change, and could result in no rate change at all.⁷ Thus, a reduction in the PCI to reflect the disallowed exogenous costs would not necessarily result in an equal reduction in the API rates in the Traffic Sensitive Basket for that period.

⁵ See, e.g., Investigation of Special Access Tariffs of Local Exchange Carriers, 5 FCC Rcd 4861 (1990) (“Section 204(a) specifically authorized the Commission to order refunds at the conclusion of such a proceeding if such relief is appropriate”); 5 FCC Rcd 1717, 1721 n. 31 (1990) (“In the context of a Section 204(a) investigation, the decision whether to require refunds -- and in what amounts -- is committed to the sound discretion of this Commission.”).

⁶ MCI, p. 2.

⁷ For example, NYNEX’s PCI for the Traffic Sensitive Basket was above the API for the basket by almost \$7.7 million for the 1994 tariff year. Other baskets were also priced below the cap by significant amounts during the 1993-1996 period.

MCI and AT&T are thus incorrect in assuming that the rates for access services in the Traffic Sensitive Basket would have been lower if the disallowed exogenous costs had not been included. This would only be the case if the affected basket(s) were priced at the cap. As shown above, that has not always been the case, and for much of the time period, NYNEX's API was below the PCI.

In the event that the Commission were to determine that a retroactive adjustment was appropriate in this case, the PCI would have to be recalculated for prior tariff filings and compared with the APIs for those periods to determine the amount of adjustment, if any, to include in the prospective PCI changes. No such calculations have been made by AT&T and MCI here.

The Commission should therefore deny AT&T's and MCI's Petition For Reconsideration.

Respectfully submitted,

NYNEX Telephone Companies

By: 
William J. Balcerski

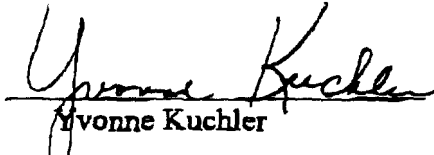
1111 Westchester Avenue
White Plains, NY 10604
(914)644-6207

Their Attorney

Dated: December 11, 1996

CERTIFICATE OF SERVICE

I, Yvonne Kuchler, hereby certify that copies of the foregoing **NYNEX**
OPPOSITION were served on the parties listed below, this 11th day of December, 1996,
by first class United States mail, postage prepaid.


Yvonne Kuchler

Ava B. Kleinman
Mark C. Rosenblum
Seth S. Gross
AT&T CORPORATION
295 North Maple Avenue
Room 3245F3
Basking Ridge, NJ 07920

Alan Buzacott
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Robert M. Lynch
Durward D. Dupre
Mary W. Marks
Jonathan W. Royston
J. Paul Waters
Southwestern Bell Telephone Co.
One Bell Center, Room 3520
St. Louis, MO 63101

Edward Shakin
Bell Atlantic Telephone Companies
1320 North Court House Road
8th Floor
Arlington, VA 22201